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(916) 445-3076

April 25, 1979

Mr. Gerald F. Allen
Sutter County Assessor
463 Second Street
Yuba City, CA 95991

Dear Mr. Allen:

This is in reply to your letter to Glenn Rigby, Assistant Chief Counsel, on the question of securing personal property owned by a corporation to real property owned by the individual who owns the corporation. Glenn asked that I reply to your letter. In our opinion you cannot cross-secure the personal property of the corporation to the real property of the owner of the corporation unless that person is also the assessee of the personal property.

As you know, Section 2189 of the Revenue and Taxation Code provides that:

"A tax on personal property is a lien on any real property on the secured roll also belonging to the owner of the personal property if the personal property is located upon such real property or the lien date...." (Emphasis added.)

The question you are raising is what is the definition of the term "owner" appearing in this section.

The general rule of tax law, and that which we use in determining whether a change in ownership has occurred under Proposition 13, is that a corporation is owner of the assets in its name and that the owner of the corporation is not the owner of the corporate assets. However, the term "owner" carries different meanings in different contexts and in the context of who is to be assessed and how best to insure payment of taxes we are guided by court decisions in that area of the law.

It is our opinion that Section 405 of the Revenue and Taxation Code works hand-in-hand with other sections seeking to insure payment of taxes. It appears that if one is an assessee

under Section 405 the courts authorize all legal methods of insuring payment of taxes and for providing security for taxes. The courts hold that if one is an assessee the only way to make that fact meaningful is to authorize methods of collection and security as if he were the legal owner.

These conclusions are drawn from an analysis of cases interpreting the word owner in similar situations. Former Political Code Section 3821 (present Section 2951) authorized the seizure and sale of property "owned" by the person against whom the tax is assessed. The case of RCA Photo Phone, Inc. v. Huffman, (1935) 5 Cal. App. 2d 401, held that the term "owner" in Section 3821 may include other than the possessor of legal title to the property. In other words, the assessor can seize and sell personal property of one in possession of that property if that person is the assessee. This result is evidenced by the present wording of Section 2951.

The case of Thompson v. Board of Supervisors, (1936) 13 Cal. App. 2d 134, held that the term "owner" in what is now Section 2189 was intended in the same sense as that under consideration in the RCA case. Thus, we can conclude it is permissible to cross-secure personal property to the same extent it is permissible to assess the possessor of that property. However, when the possessor of the personal property is not the assessee, we do not believe the courts would sanction cross-securing on the land of another assessee.

In summary, we conclude that the personal property of a corporation used by an individual on land owned by the individual can be cross-secured to the land only when the individual is also the assessee of the personal property under Section 405. In the event that the corporation is the assessee for the personal property, there can be no cross-securing on the land of another assessee even if that assessee is the owner of the corporation.

Very truly yours,

Robert D. Milam
Tax Counsel

RDM:fr

bc: Mr. Bud Florence